

Assembly Bill No. 1339

Passed the Assembly August 22, 2013

Chief Clerk of the Assembly

Passed the Senate August 19, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1510, 1821, 2250, and 2643 of, and to add Sections 2614.7, 2614.8, and 2643.1 to, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1339, Maienschein. Professional fiduciaries: guardians and conservators.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that certain persons may file a petition for the appointment of a conservator. Existing law provides that on or after the filing of a petition for appointment of a guardian or conservator, a person entitled to petition for the appointment of a guardian or conservator may file a petition for the appointment of a temporary guardian or temporary conservator, as specified. Under existing law, when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner is a professional fiduciary, as defined, the petition must include specified additional information, including the petitioner's license information and a statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

This bill would require that when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner or proposed conservator is a professional fiduciary, as defined, the petition also include the petitioner's or proposed conservator's proposed hourly fee schedule or another statement of the petitioner's or proposed conservator's proposed compensation from the estate of the proposed conservatee for services performed. The bill would provide that provision of that schedule or statement shall not preclude a court from reducing the hourly fees or other compensation.

This bill would also require, when a petition to appoint a guardian or temporary guardian is filed, and the petitioner or proposed guardian is a professional fiduciary, as defined, the petition to include the same additional information as when a professional fiduciary files a petition to appoint a conservator or a temporary conservator. The bill would also provide that provision of a proposed hourly fee schedule or another statement of proposed compensation shall not preclude a court from reducing the fees or other compensation.

Existing law requires, within 90 days of a guardian's or conservator's appointment, the guardian or conservator to file an inventory and appraisal.

This bill would require the guardian or conservator, if he or she is a professional fiduciary, as defined, to file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed. The bill would also authorize the guardian or conservator to submit a new proposed hourly fee schedule or another statement of his or her proposed compensation at any time on or after one year from the original submission, as specified. The bill would provide that filing or submittal of those schedules or statements shall not preclude a court from reducing the guardian's or conservator's hourly fees or other compensation or his or her attorney's fees, as the case may be.

Existing law permits the court, on petition by the guardian or conservator, to authorize periodic payments on account to the guardian or conservator for the services rendered by those persons during the period covered by each payment.

This bill would permit the court, on petition by a guardian or conservator who is a professional fiduciary, as defined, to authorize periodic payments on account only if the guardian or conservator filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed with the inventory and appraisal and only after addressing all objections to the petition. The bill would also provide that the authorization for periodic payments to a guardian or conservator who is a professional fiduciary, as defined, shall terminate on a date determined by the court, but not later than the due date of the next succeeding accounting.

The people of the State of California do enact as follows:

SECTION 1. Section 1510 of the Probate Code is amended to read:

1510. (a) A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor. A relative may file a petition for the appointment of a guardian under this section regardless of the relative's immigration status.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that the appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(6) In the case of a guardianship of the person involving an Indian child, any Indian custodian and the Indian child's tribe.

(d) If the petitioner or proposed guardian is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed guardian's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward for services performed as a guardian. The petitioner's or proposed guardian's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed guardian's fees or other compensation.

(2) Unless a petition for appointment of a temporary guardian that contains the statements required by this paragraph is filed together with a petition for appointment of a guardian, both of the following:

(A) A statement of the petitioner's or proposed guardian's license information.

(B) A statement explaining who engaged the petitioner or proposed guardian or how the petitioner or proposed guardian was engaged to file the petition for appointment of a guardian or to agree to accept the appointment as guardian and what prior relationship the petitioner or proposed guardian had with the proposed ward or the proposed ward's family or friends.

(e) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner or proposed guardian, the petition shall state that fact and name the institution.

(f) The petition shall state, so far as is known to the petitioner or proposed guardian, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.

(g) If the petitioner or proposed guardian has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding.

(h) If the petitioners or proposed guardians have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners or proposed guardians shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(i) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition, and the consolidated case shall be heard and decided in the court in which the adoption is pending.

(j) If the proposed ward is or may be an Indian child, the petition shall state that fact.

SEC. 2. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner or proposed conservator is a bank or other entity authorized to conduct the business of a trust company, the petitioner or proposed conservator shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner or proposed conservator has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner or proposed conservator if he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

If any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner or proposed conservator shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public

conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner or proposed conservator, the petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

- (1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.
- (2) The children of a predeceased spouse or domestic partner of a proposed conservatee.
- (3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.
- (4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petitioner or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed conservator's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed conservatee for services performed as a conservator. The petitioner's or proposed conservator's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a temporary conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a conservator, both of the following:

(A) A statement of the petitioner's or proposed conservator's license information.

(B) A statement explaining who engaged the petitioner or proposed conservator or how the petitioner or proposed conservator was engaged to file the petition for appointment of a conservator or to agree to accept the appointment as conservator and what prior relationship the petitioner or proposed conservator had with the proposed conservatee or the proposed conservatee's family or friends.

(d) If the petition is filed by a person other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a conservator and the appointment of the proposed conservator or why it was not feasible to ascertain those preferences.

(e) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(f) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner

or proposed conservator, the petition shall state that fact and name the institution.

(g) The petition shall state, so far as is known to the petitioner or proposed conservator, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(h) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(i) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(j) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

SEC. 3. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate, or both.

(2) A temporary conservator of the person or estate, or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate, or both, or a temporary conservator of the person or estate, or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) If the petitioner, proposed guardian, or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition for appointment of a temporary guardian or temporary conservator shall include the following:

(1) The petitioner's, proposed guardian's, or proposed conservator's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward or proposed conservatee for services performed as a guardian or conservator. The petitioner's, proposed guardian's, or proposed conservator's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's, proposed guardian's, or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a guardian or conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a temporary guardian or temporary conservator, both of the following:

(A) A statement of the petitioner's, proposed guardian's, or proposed conservator's registration or license information.

(B) A statement explaining who engaged the petitioner, proposed guardian, or proposed conservator or how the petitioner, proposed guardian, or proposed conservator was engaged to file the petition for appointment of a temporary guardian or temporary conservator or to agree to accept the appointment as temporary guardian or temporary conservator and what prior relationship the petitioner, proposed guardian, or proposed conservator had with the proposed ward or proposed conservatee or the proposed ward's or proposed conservatee's family or friends.

(d) If the petition is filed by a party other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.

(e) Unless the court for good cause otherwise orders, at least five court days before the hearing on the petition, notice of the hearing shall be given as follows:

(1) Notice of the hearing shall be personally delivered to the proposed ward if he or she is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be delivered to the proposed ward if he or she is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner or proposed guardian is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator. If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and has not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing shall be served on the public guardian of the county in which the petition is filed.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing.

(f) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the

temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(g) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(h) (1) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days prior to the hearing.

(2) If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this section shall be given at least five court days prior to the hearing.

(i) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(j) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

(k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (e), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

(l) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

SEC. 4. Section 2614.7 is added to the Probate Code, to read:

2614.7. If a guardian or conservator of the person or estate, or both, is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the guardian or conservator shall file, concurrently with the inventory and appraisal required by Section 2610, a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed as a guardian or conservator. The filing of a proposed hourly fee schedule or another statement of the guardian's or conservator's proposed compensation, as required by this section, shall not preclude a court from later reducing the guardian's, conservator's, or his or her attorney's fees or other compensation.

SEC. 5. Section 2614.8 is added to the Probate Code, to read:

2614.8. At any time on or after one year from the submission of an hourly fee schedule or another statement of proposed compensation under this section or under Section 1510, 1821, 2250, or 2614.7, a guardian or conservator who is a professional fiduciary may submit a new proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward or proposed conservatee. The submittal of a new hourly fee schedule or another statement of the guardian's or conservator's proposed compensation, as authorized by this section, shall not preclude a court from later reducing the guardian's or conservator's hourly fees or other compensation, or his or her attorney's fees or other compensation.

SEC. 6. Section 2643 of the Probate Code is amended to read:

2643. (a) Except as provided in Section 2643.1, on petition by the guardian or conservator of the person or estate, or both, the court may by order authorize periodic payments on account to any one or more of the following persons for the services rendered by that person during the period covered by each payment:

- (1) The guardian of the person.
- (2) The guardian of the estate.

- (3) The conservator of the person.
- (4) The conservator of the estate.
- (5) The attorney for the guardian or conservator of the person or estate, or both.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The petition shall describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of those services. The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order are subject to review by the court upon the next succeeding account of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court shall make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered.

SEC. 7. Section 2643.1 is added to the Probate Code, to read:

2643.1. (a) On petition by a guardian or conservator of the person or estate, or both, who is a professional fiduciary, as described in Section 2340 and who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the court may by order authorize periodic payments on account to a person described in subdivision (a) of Section 2643 for the services rendered by that person during the period covered by each payment only if that person has filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed as a guardian or conservator, as required by Section 2614.7, and only after the court has addressed any objections filed pursuant to subdivision (d).

(b) The petition shall describe the services to be rendered on a periodic basis, the reason why authority to make periodic payments is requested, and a good faith estimate of the fees to be charged

by the professional fiduciary from the date the petition is filed up to, and including, the date of the next succeeding account required by Section 2620 or, if the next succeeding account required by Section 2620 is due in less than one year, a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed through the next succeeding 12 months, inclusive. Prior to ordering periodic payments or fixing the amount of the periodic payment, the court shall determine whether making periodic payments is in the best interest of the ward or conservatee, taking into consideration the needs of the ward or conservatee and the need to preserve and protect the estate. If the court determines that making periodic payments is not in the best interest of the ward or conservatee, the court shall deny the petition to authorize periodic payments. If the court determines that making periodic payments is in the best interest of the ward or conservatee, the court shall fix the amount of the periodic payment. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of those services.

(c) (1) Notice of the hearing on the petition and notice of how to file an objection to the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(2) The notices required by paragraph (1) shall be made to the court investigator for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) (1) Any person entitled to notice under paragraph (1) of subdivision (c) may file with the court a written objection to the authorization of periodic payments on account. The court clerk shall set any objections for a hearing no fewer than 15 days after the date the objections are filed.

(2) If an objection is filed pursuant to paragraph (1), the guardian or conservator shall have the burden of establishing the necessity for and amount, if any, of periodic payments.

(e) The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order shall be reviewed by the court upon the next succeeding account of the guardian or conservator of the estate to determine that the services were actually rendered and that the

amount paid on account was reasonable and in the best interest of the ward or conservatee, taking into consideration the needs of the ward or conservatee and the need to preserve and protect the estate. The court shall make an appropriate order reducing the guardian or conservator's compensation if the court determines that the amount paid on account was either unreasonable or not in the best interest of the ward or conservatee in view of the services actually rendered.

(f) The authorization for periodic payments granted pursuant to this section shall terminate on a date determined by the court, but not later than the due date of the next succeeding account required by Section 2620. Nothing in this section shall preclude a guardian or conservator from filing a subsequent petition to receive periodic payments pursuant to this section.

Approved _____, 2013

Governor